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PUC PROJECT NO. 51841

**REVIEW OF 16 TAC §25.53 RELATING § PUBLIC UTILITY COMMISSION
TO ELECTRIC SERVICE §
EMERGENCY OPERATIONS PLANS § OF TEXAS**

**INITIAL COMMENTS OF
TEXAS LEGAL SERVICES CENTER
DISABILITY RIGHTS TEXAS
January 4, 2022**

I. Introduction

Texas Legal Services Center (TLSC) files these comments with Disability Rights Texas, Texas Parent to Parent, and Texas Council for Developmental Disabilities on the Public Utility Commission (PUC) proposal *Relating to Electric Service Emergency Operations Plans* (EOP). The proposed rule is intended to implement §24 of Senate Bill 3 from the 87th Regular Session of the Texas Legislature, which amended Tex. Util. Code §186.007 relating to Public Utility Commission Weather Emergency Preparedness Reports.

These new requirements direct the PUC to review existing EOP and make recommendations to improve the EOP. In February 2021, many households were without electricity for hours and even days creating dangerous conditions in our homes for everyone, in particular homes occupied by individuals medically dependent on electricity. The proposal for publication omits any mention of SB968 which amends Texas Government Code §418.301 to 418.305 to provide wellness checks for medically fragile individuals during an extended power, water, or gas outage. §418.304 establishes that a wellness check is to be conducted to ensure the individual has continuity of care and the ability to continue using electrically powered medical equipment.

Power outages are the jurisdiction of the PUC. PUC Substantive Rule §25.497 sets forth eligibility requirements and an application process for chronic condition and critical care customers who are in effect medically dependent on electricity. Therefore, this rule proposal should encompass the wellness check legislation and require every utility EOP to specifically engage in inclusive planning to provide emergency services to people medically dependent on electricity during a power outage.

II. Background

The Winter Storm of 2021 affected everyone. Winter Storm Uri brought the state of Texas to a standstill. At its peak, the storm left 4.5 million homes and businesses without power, killed at least 111 people, and cost Texans around \$195 billion.¹

The 2021 session of the Texas Legislature debated several initiatives to address some of the problems facing Texas' electric grid and the reliability of electricity service. Studies have been conducted by universities, the Electric Reliability Council of Texas (ERCOT), the Federal Energy Regulatory Commission (FERC), and many others. TLSC has located only one study that attempts to measure the impact of the storm on people with disabilities and those medically dependent on electricity.² The study conducted by Disability Rights Texas illustrates that emergency response for Texans with disabilities is inadequate, including those designated as critical care and chronic condition customers on utility registries. The EOP review underway in this project is an opportunity to identify and prioritize the needs of the most vulnerable customers and ensure cross collaboration among appropriate agencies to achieve inclusive

¹ <https://uh.edu/uh-energy/research/forbes-blog/failure-of-texas-power-grid/#:~:text=Effects%20of%20Winter%20Storm%20Uri%20across%20the%20state.120%20hours%2C%20for%20an%20average%20of%2046%20hours.>

² "The Forgotten Faces of Winter Storm URI, The Impact on Texans with Disabilities When We Fail to Conduct Inclusive Disaster Planning and Preparedness", A Report By: Disability Rights Texas <https://media.disabilityrightstx.org/wp-content/uploads/2021/04/06100917/apr-5-2021-DRTX-winter-survey-report-FINAL.pdf>.

emergency planning practices to sustain community lifelines and mitigate potential dangers during power outages.

Many residential utility customers and/or their family members rely on durable medical equipment and heating and air conditioning for body temperature control. Project No. 39275 Utility Report Concerning Critical Care Customers documents in 2020 a total of 7,702 critical care customers and 2,828 chronic condition customers (together 10,530) in areas of Texas where there is retail electric competition. Updated numbers for 2021 will be available March 1, 2022 in PUC Project No. 39275. There is no reporting requirement for municipal utilities, electric cooperatives, and regulated privately owned utilities. The reports currently on file with the PUC represent a portion of the population faced with life threatening impacts during a power outage. There is no utility or community back-up plan for emergency operation of life sustaining medical equipment.

The Legislature has set the stage for the PUC, Texas Department of Emergency Management (TDEM) and the Health and Human Services Commission (HHSC) to work together and with local emergency service providers to afford inclusive planning and provide equitable response and recovery measures for Texans dependent on durable medical equipment during an extended power outage.

February's Winter Storm Uri blackout profoundly affected many Texans with disabilities who rely on electric powered durable medical equipment (DME) for their survival and wellness. In response to this disaster the Texas State Independent Living Council and Governor's Committee on People with Disabilities gathered stakeholders to form a cross-disability Durable Medical Equipment Power Task Force to identify solutions for meeting emergency power needs for individual users of DME living in the community. The task force is comprised of AARP

Texas, The Arc of DFW Area, Disability Rights Texas, Texas Council for Developmental Disabilities, Texas Legal Services Center, Texas Medical Equipment Providers (TexMEP), Texas Parent to Parent, stakeholders in healthcare and emergency response, disability advocates, and other agencies serving Texans with disabilities. The Task Force filed planning recommendations on July 5, 2021 in Project No. 51812³ anticipating a commission review and inclusion as part of this rulemaking. See attachment p. 11

Many Texans who depend on DME lack the physical and financial resources required to provide their own back-up power. The task force established a list of inclusive emergency planning recommendations for consideration and implementation by the PUC. We are disappointed that the proposed rule is silent on emergency planning needs for those customers who need help the most during a power outage.

The matter of inclusive EOP is further explained and emphasized by a pending Policy Development Proposal issued by the Governor's Committee on People with Disabilities dated 11/01/18 attached herein at p. 13.

III. Comments on Proposed Rule

We offer the following comments on the proposed rule to begin the process of making the utility EOP an inclusive strategy that provides needed emergency services to those medically dependent on electricity during outages.

A. Information to be Included in Plan

Proposed §25.53 (d) states the information that is to be included in the emergency operations plan. The information categories listed are of such a general nature that it is impossible to visualize what an EOP would entail. We are asking the Commission to be clear

³ http://interchange.puc.texas.gov/Documents/51812_223_1137673.PDF

that the safety of critical care and chronic condition customers are a priority established by the Legislature. The EOP must be transparent about the process for identifying DME power dependent customers within utility service areas, how risk is identified and assessed, and the roles of various agencies, departments and other entities during a power outage. We request language be added to explain the minimum requirements for inclusive emergency planning including but not limited to the following:

- Proposed §25.53(d)(1)(B) would list the individuals responsible for maintaining and implementing the EOP, and those who can change the EOP. TLSC asks the proposed rule be amended to specifically name the individual responsible for emergency planning for customers medically dependent on electricity.
- Proposed §25.53(d)(3) should identify a single point of contact during an emergency for customers medically dependent on electricity. The contact should not be a single person but a process, a general hotline number dedicated to customers medically dependent on electricity which is activated during disasters or other emergencies.
- Proposed §25.53(d)(5)(C) should outline specific procedures for communicating with customers medically dependent on electricity.
- Proposed §25.53(d)(6) should include a plan to maintain pre-identified supplies for emergency response to customers medically dependent on electricity.

B. Annexes

Proposed §25.53 (b)(1) defines annex as “a section of an emergency operations plan (EOP) that addresses how an entity plans to respond to the incidence of a specific hazard or threat.” Proposed §25.53(e) lists annexes to be included in the EOP.

The annex requirements are event related, i.e., cold weather, hot weather, hurricane, wildfire, pandemic, etc. with the exception of the load shed annex which could occur in any of the event-related emergencies. The only mention of our most vulnerable in those medically dependent on electricity for life sustaining measures is the proposed §25.53 (e)(1)(C)(iii) with the rare mention of a registry of critical load customers. The registry itself is a critical data point in identifying our most vulnerable and could be used for inclusive emergency planning purposes with awareness to the public. Local utility providers must utilize this data to accurately identify the risks and needs of this specific population within their jurisdictions and plan accordingly.

Residential customers integrated into the community living in single family homes and apartments who are medically dependent on electricity should be treated separately from other critical load customers such as hospitals, police and fire stations, nursing homes, and natural gas production facilities. Commercial critical load customers are prioritized over residential critical care and chronic condition customers in load shedding events. Thus residential customers integrated into the community, even if they are critical care or chronic condition, are subject to service interruptions. Having an effective EOP for meeting emergency medical power needs is long overdue.

Residential customers living in apartments and single family homes even if they are critical care or chronic condition are subject to service interruptions. Consequently every EOP annex must clearly and specifically describe the plans in place and steps to be taken to safeguard customers medically dependent on electricity during a power emergency. Thus, each event annex should explain the following in detail:

- How transmission and distribution utilities, regulated utilities, retail electric providers, municipal utilities, electric cooperatives, TDEM, HHSC and any local


emergency or disaster personnel will exchange protected customer information to identify customers medically dependent on electricity.

- How power dependent needs will be identified and planned for within the specific event and jurisdiction.
- How wellness checks will be conducted.
- Identify equipment and/or supplies that will be available for emergency response.
- How the annex provides for inclusive emergency planning requirements and responses.

IV. Summary and Conclusion

Winter Storm Uri has pointed out shortcomings of the electric market and supply system in Texas. A serious shortcoming of the Texas electricity market is a failure to provide a safety net for residential customers medically dependent on electricity. Some parties have already requested a hearing on January 11, 2022. We hope the Commission grants the hearing request and listens carefully to the critical needs of households with members with disabilities who are reliant on power for life sustaining measures. Inclusive planning is a whole community activity and to sustain equitable response and recovery measures we recommend the Commission establish a process to bring the appropriate parties together to design a planning rule and planning mechanism that identifies, includes and serves the needs of the disability community in times of disasters and emergencies. We look forward to working with the Commission and other parties to help customers medically dependent on electricity be provided with the back-up they need when the power system fails. If everyone works together we believe inclusive planning can be provided to assure the medical power needs of people with disabilities are met during the next power emergency.

Respectfully submitted:



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EXECUTIVE SUMMARY

Texas Legal Service Center and Disability Rights Texas support electric service emergency operations plans that are inclusive of people with disabilities, in particular critical care and chronic condition customers medically dependent on electricity. In a leadership position, utilities should develop plans in coordination with Texas Department of Emergency Management, the Health and Human Services Commission, and other service and advocacy organizations to implement wellness checks as required by Texas Government Code §418.301 to 305. We also request language be added to explain minimum requirements for inclusive emergency planning including but not limited to the following:

- Proposed §25.53(d)(1)(B) would list the individuals responsible for maintaining and implementing the EOP, and those who can change the EOP. The proposed rule should be amended to specifically name the individual responsible for emergency planning for customers medically dependent on electricity.
- Proposed §25.53(d)(3) should identify a single point of contact during an emergency for customers medically dependent on electricity. The contact should not be a single person but a process, a general hotline number dedicated to customers medically dependent on electricity which is activated during disasters or other emergencies.
- Proposed §25.53(d)(5)(C) should outline specific procedures for communicating with customers medically dependent on electricity.
- Proposed §25.53(d)(6) should include a plan to maintain pre-identified supplies for emergency response to customers medically dependent on electricity.
- Each annex should explain how utilities, retail electric providers TDEM, HHSC and any local emergency or disaster personnel will exchange protected customer information to identify customers medically dependent on electricity.
- Each annex should explain how power dependent needs will be identified and planned for within the specific event and jurisdiction.
- Each annex should explain how wellness checks will be conducted.
- Each annex should identify equipment and/or supplies that will be available for emergency response.

- Each annex should explain how the annex provides for inclusive emergency planning requirements and responses.

TEXAS DISASTER PREPAREDNESS
DURABLE MEDICAL EQUIPMENT POWER TASK FORCE

July 5, 2021

February's Winter Storm Uri blackout profoundly affected many Texans with disabilities who rely on powered durable medical equipment (DME) for their survival and wellness. In response to this disaster the Texas State Independent Living Council and Governor's Committee on People with Disabilities gathered disability stakeholders to form a cross-disability Durable Medical Equipment Power Task Force to identify solutions for meeting emergency power needs for individual users of DME living in the community. The task force is comprised of AARP Texas, The Arc of DFW Area, Disability Rights Texas, Texas Council for Developmental Disabilities, Texas Legal Services Center, Texas Medical Equipment Providers (TexMEP), Texas Parent to Parent, stakeholders in healthcare and emergency response, disability advocates, and other agencies serving Texans with disabilities.

Many Texans who depend on DME lack the physical and financial resources required to provide their own back-up power. Based on our own experiences and information gathered, the task force established a list of inclusive emergency planning recommendations for consideration and implementation by the Public Utility Commission (PUC) of Texas.

To protect the lives of Texans dependent on DME, the PUC must utilize its leadership role to coordinate electric utility disaster response plans with the Texas Department of Emergency Management (TDEM) and advocacy organizations. Inclusive planning and operations are needed to ensure critical lifelines are sustained for DME-dependent consumers in the event of an unplanned outage. In the planning process, electric utilities, in coordination with TDEM and local offices of emergency management, should implement the following:

- Establish a process to utilize contact information for critical care and chronic condition residential customers to conduct wellness checks during extended outages.
- Establish a dedicated toll-free telephone number available 24/7 for critical care and chronic condition residential customers to call for information about unplanned outages.

- Provide back-up batteries and battery charging options for DME for critical care and chronic condition residential customers.
- Provide emergency portable generators to critical care and chronic condition residential customers.
- Fund a back-up power grant program for households that meet appropriate income guidelines and eligibility criteria. See the PG&E Disability Disaster Access and Resources program as an example.
- Coordinate with local offices of emergency management to identify emergency power reserves for local dialysis clinics.
- Protect individuals with temperature-sensitive conditions during unplanned power outages.
- Provide medically necessary refrigeration during unplanned outages.
- Develop other applicable measures for building a safety net for critical care and chronic condition residential customers.

Respectfully submitted,

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Governor's Committee on People with Disabilities (GCPD)

Policy Development Proposal

Issue Description:

In February 2021, during Winter Storm Uri, thousands of Texans who depend upon electricity to power life-sustaining durable medical equipment lost power in their homes for an extended period of time. Local emergency managers and first responders did not have complete access to necessary data to understand which individuals would be in an immediate crisis as a result of power loss. Advances in technology and health care service delivery have better enabled at-risk individuals with access and functional needs to live independently in their personal homes. Millions of at-risk individuals, particularly older adults and those who are chronically ill, rely upon essential health care services and or electricity-dependent durable medical equipment (DME) and assistive technology devices, to do so. Local incidents, such as prolonged power outages, to large-scale public health emergencies, such as a pandemic and disasters, can disrupt access to health care and rapidly thrust these at-risk individuals into life-threatening situations within hours or days. Many may rapidly seek assistance from emergency medical services (EMS), and or overwhelm hospitals and shelters when seeking access to care or secure power. Others may shelter in place, as they are unable to evacuate safely without assistance, putting their lives at risk. These situations lead to severe surges in healthcare demand; stress on public health, health care, emergency management, and first responder systems and shelters; and, commonly lead to increases in adverse health outcomes for at-risk individuals impacted by the event.

Public health officials, emergency managers, first responders and health care providers commonly reported that they did not have access to timely information that could help them better address the needs of at-risk populations in their communities.

To protect the lives of Texans dependent on durable medical equipment (DME), the Texas Department of Emergency Management (TDEM) must utilize its leadership role to persuade the Public Utility Commission (PUC) to require electric utilities to coordinate disaster response plans with local emergency management offices and advocacy organizations. As part of its reforms, the Legislature passed a mandate for TDEM to arrange for wellness checks on medically fragile individuals which includes those individuals dependent on DME. The PUC has established a process for the electric industry to maintain a list of critical care and chronic condition customers who are dependent on electricity for life function.

Because the PUC already has a working procedure for utilities and retail electric providers to identify customers dependent on electricity for life function there is an intuitive efficiency in having TDEM coordinate information exchange with the PUC in the event of a disaster because using the utility registry will allow local emergency management offices to readily reach out to those dependent on DME.

The policy proposal will require a change in:

Administrative Policy ☐ **Agency Rule** ☒ State Law ☐

New Law ☐ Other (e.g. public awareness campaign, etc.) ☐

Describe:

Explain how this is a common, frequent or significant issue.

Texas, the second-largest state by area, is the most disaster-prone state in the country. In 2017, Hurricane Harvey devastated the state, and it has been called the worst natural disaster in the state's history. The Lone Star State has also endured floods, tornadoes, severe ice storms and drought. See <https://www.fema.gov/data-visualization/disaster-declarations-states-and-counties>. Along with hurricanes, Texas also has to contend with flooding, often caused by these tropical storms, as well as tornadoes and wildfires. The dry, flat nature of much of Texas lends itself to both great tornado conditions, and wildfires. This, mixed with the coastal storms, has made Texas the leading state in terms of natural disaster frequency. As ocean waters rise, and climate change affects regional temperatures, the frequency and severity of these natural disasters seems to be increasing, causing concern over costly and dangerous conditions for Texas State residents. See <https://www.usnews.com/news/best-states/slideshows/the-most-disaster-prone-states-in-the-us?slide=12>

This is a serious issue for people who depend on life sustaining DME. Texas' population continues to grow and so does the number of individuals who need backup power during an emergency. More people with life threatening health conditions are choosing to live in their homes rather than institutions. More people are living at home instead of in an institution because it is more cost effective and allows them to maintain as much independence as possible. As of December 2020 there were 10,530 utility customers on the utilities' critical care registries.

Links to additional information:

SB 968 Subsection J amends Texas government Code 418.301 and 418 305.

PUC Substantive Rule §25.497. Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers. See rule at

<http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.497/25.497.pdf>

PUC Project Number 51888 Project 51888 Review of Critical Load Standards and

Processes

Hyperlinks to Rules needing to be updated; PUC's Critical Care form; Energy Annex ESF-12. Texas Government Code, Wellness checks. Sec. 418.301 and Sec.A418.305.AAEVENTS REQUIRING WELLNESS CHECKS.

Identify GCPD Issue Area(s) affected:

Emergency Preparedness

Describe the proposed policy or legislative solution:

TDEM will work with PUC to remove all regulatory or legal barriers to allow information sharing between utilities, state agencies, and local offices of emergency management and their representatives to carry out wellness checks during disasters on medically fragile customers. For example, require local emergency management offices and electricity providers to develop plans for protecting individuals dependent on DME during unplanned power outages, conduct periodic training exercises and otherwise make preparations to assure the safety of critical care and chronic condition individuals during power emergencies. Develop a memorandum of understanding between agencies, establish protocols and key contacts for use by emergency management offices and electric providers during unplanned outages, develop data use agreement templates and make them available to the local offices of emergency management. See DME Task Force recommendations provided to the PUC. <http://interchange.puc.texas.gov/search/documents/?controlNumber=51812&itemNumber=223>

Legislative History:

Were similar bills filed in the past? What prevented its success? Link to that legislation if possible.

Explain the feasibility of this recommendation:

The statutory authority to make a positive change in emergency preparedness by providing wellness checks on individuals dependent on electricity for serious health conditions exists. The exchange of information during an emergency can be legally accomplished under existing privacy laws. The challenge is the coordination of local utility policies established at the PUC with the policies of local emergency management offices established at TDEM. Because both state agencies are undertaking review of their emergency operations because of the Winter Storm and new legislation it is an opportune time to coordinate information resources.

<p>List any known cost factors (fiscal note). Show calculations.</p> <p>The joint planning effort and information exchange proposed herein should be accomplished in the normal operations of TEDEM, the PUC, local utilities and local emergency management offices.</p>	
<p>State agency(ies) affected by proposal:</p> <ul style="list-style-type: none"> Texas Department of Emergency Management Public Utility Commission Click or tap here to enter text. 	
<p>Stakeholder groups likely to support this proposal:</p> <ul style="list-style-type: none"> AARP Texas Texas Legal Services Center Click or tap here to enter text. 	
<p>Stakeholder groups likely to oppose this proposal:</p> <ul style="list-style-type: none"> Utilities Retail Electric Providers Click or tap here to enter text. 	
<p>Describe how affected groups will be impacted by proposed solution(s) (i.e., cities, counties, businesses, employers, etc.):</p> <p>The proposal should result in better protection of DME dependent individuals during a disaster. We can see no negative impacts provided that privacy of individuals is fully protected in the information exchange process.</p>	
<p>Recommended for GCPD policy recommendations: Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>MOTION: GCPD staff use only</p>	
<p>Signature of GCPD Exec Director: /s/</p>	<p>Date:</p>
<p>Signature of GCPD Chairman: /s/</p>	<p>Date:</p>
<p>(For Office Use Only)</p> <p>Date of Initial Submission:</p> <p>Date Recommendation was Updated:</p> <p>Date Routed to Affected State Agency(ies) for Analysis:</p>	